

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF WASHINGTON**

LISA NICHOLS,

Plaintiff,

vs.

CAROLYN W. COLVIN,

Acting Commissioner of Social Security,

Defendant.

No. 1:15-CV-03080-MKD

ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

ECF Nos. 15, 21

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 15, 21. The parties consented to proceed before a magistrate judge. ECF No. 6. The Court, having reviewed the administrative record and the parties' briefing, is fully informed. For the reasons discussed below, the Court denies Plaintiff's motion (ECF No. 15) and grants Defendant's motion (ECF No. 21).

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ~

## JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. § 1383(c)(3).

## STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether the standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674

1 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an  
2 ALJ’s decision on account of an error that is harmless.” *Id.* An error is harmless  
3 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”  
4 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ’s  
5 decision generally bears the burden of establishing that it was harmed. *Shineski v.*  
6 *Sanders*, 556 U.S. 396, 409-410 (2009).

### 7 **FIVE-STEP EVALUATION PROCESS**

8 A claimant must satisfy two conditions to be considered “disabled” within  
9 the meaning of the Social Security Act. First, the claimant must be “unable to  
10 engage in any substantial gainful activity by reason of any medically determinable  
11 physical or mental impairment which can be expected to result in death or which  
12 has lasted or can be expected to last for a continuous period of not less than twelve  
13 months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant’s impairment must be  
14 “of such severity that he is not only unable to do his previous work[,] but cannot,  
15 considering his age, education, and work experience, engage in any other kind of  
16 substantial gainful work which exists in the national economy.” 42 U.S.C. §  
17 1382c(a)(3)(B).

18 The Commissioner has established a five-step sequential analysis to  
19 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §

20 ORDER DENYING PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT  
AND GRANTING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT ~

1 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant's  
2 work activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in  
3 "substantial gainful activity," the Commissioner must find that the claimant is not  
4 disabled. 20 C.F.R. § 416.920(b).

5 If the claimant is not engaged in substantial gainful activity, the analysis  
6 proceeds to step two. At this step, the Commissioner considers the severity of the  
7 claimant's impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from  
8 "any impairment or combination of impairments which significantly limits [his or  
9 her] physical or mental ability to do basic work activities," the analysis proceeds  
10 to step three. 20 C.F.R. § 416.920(c). If the claimant's impairment does not  
11 satisfy this severity threshold, however, the Commissioner must find that the  
12 claimant is not disabled. 20 C.F.R. § 416.920(c).

13 At step three, the Commissioner compares the claimant's impairment to  
14 severe impairments recognized by the Commissioner to be so severe as to preclude  
15 a person from engaging in substantial gainful activity. 20 C.F.R. §  
16 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the  
17 enumerated impairments, the Commissioner must find the claimant disabled and  
18 award benefits. 20 C.F.R. § 416.920(d).

19  
20 ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ~

1 If the severity of the claimant's impairment does not meet or exceed the  
2 severity of the enumerated impairments, the Commissioner must pause to assess  
3 the claimant's "residual functional capacity." Residual functional capacity (RFC),  
4 defined generally as the claimant's ability to perform physical and mental work  
5 activities on a sustained basis despite his or her limitations, 20 C.F.R. §  
6 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

7 At step four, the Commissioner considers whether, in view of the claimant's  
8 RFC, the claimant is capable of performing work that he or she has performed in  
9 the past (past relevant work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is  
10 capable of performing past relevant work, the Commissioner must find that the  
11 claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of  
12 performing such work, the analysis proceeds to step five.

13 At step five, the Commissioner considers whether, in view of the claimant's  
14 RFC, the claimant is capable of performing other work in the national economy.  
15 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner  
16 must also consider vocational factors such as the claimant's age, education and  
17 past work experience. 20 C.F.R. § 416.920(a)(4)(v). If the claimant is capable of  
18 adjusting to other work, the Commissioner must find that the claimant is not  
19 disabled. 20 C.F.R. § 416.920(g)(1). If the claimant is not capable of adjusting to

20 ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ~

1 other work, analysis concludes with a finding that the claimant is disabled and is  
2 therefore entitled to benefits. 20 C.F.R. § 416.920(g)(1).

3 The claimant bears the burden of proof at steps one through four above.  
4 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to  
5 step five, the burden shifts to the Commissioner to establish that (1) the claimant is  
6 capable of performing other work; and (2) such work “exists in significant  
7 numbers in the national economy.” 20 C.F.R. § 416.920(c)(2); *Beltran v. Astrue*,  
8 700 F.3d 386, 389 (9th Cir. 2012).

### 9 **ALJ’s FINDINGS**

10 Plaintiff submitted her fourth application for Title XVI Supplemental  
11 Security Income (SSI) on March 16, 2012, alleging onset beginning December 1,  
12 2010. Tr. 19, 44. The application was denied initially, Tr. 87-98, and upon  
13 reconsideration, Tr. 99-111. Plaintiff appeared for a hearing before an  
14 administrative law judge (ALJ) on August 14, 2013. Tr. 37-53. On September 12,  
15 2013, the ALJ denied Plaintiff’s claim. Tr. 19-32.

16 At step one, the ALJ found that Plaintiff had not engaged in substantial  
17 gainful activity since March 16, 2012. Tr. 21. At step two, the ALJ found  
18 Plaintiff suffers from the following severe impairments: posttraumatic stress  
19 disorder and bipolar disorder. Tr. 21. At step three, the ALJ found that Plaintiff

20 ORDER DENYING PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT  
AND GRANTING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT ~

1 does not have an impairment or combination of impairments that meets or  
2 medically equals a listed impairment. Tr. 22. The ALJ then concluded that the  
3 Plaintiff has the RFC to perform a full range of work at all exertional levels with  
4 additional limitations. Tr. 23-30. At step four, the ALJ found Plaintiff could not  
5 perform any past relevant work. Tr. 30. At step five, the ALJ found that,  
6 considering Plaintiff's age, education, work experience, and RFC, there are jobs in  
7 significant numbers in the national economy that Plaintiff could perform, such as  
8 inspector hand packager, garment folder, and sorter. Tr. 31. On that basis, the  
9 ALJ concluded that Plaintiff is not disabled as defined in the Social Security Act.  
10 Tr. 31.

11 On March 27, 2015, the Appeals Council denied review, Tr. 1-6, making the  
12 ALJ's decision the Commissioner's final decision for purposes of judicial review.  
13 *See* 42 U.S.C. § 1383(c)(3); 20 C.F.R. §§ 416.1481, 422.210.

#### 14 ISSUES

15 Plaintiff seeks judicial review of the Commissioner's final decision denying  
16 her SSI under Title XVI of the Social Security Act. ECF No. 15. Plaintiff raises  
17 the following issues for this Court's review:

- 18 1. Whether the ALJ properly discredited Plaintiff's symptom claims; and
- 19 2. Whether the ALJ properly weighed the medical opinion evidence.

20 ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ~

## DISCUSSION

### A. Adverse Credibility Finding

Plaintiff faults the ALJ for failing to provide specific findings with clear and convincing reasons for discrediting her symptom claims. ECF No. 15 at 20-31.

An ALJ engages in a two-step analysis to determine whether a claimant's testimony regarding subjective pain or symptoms is credible. "First, the ALJ must determine whether there is objective medical evidence of an underlying impairment which could reasonably be expected to produce the pain or other symptoms alleged." *Molina*, 674 F.3d at 1112 (internal quotation marks omitted). "The claimant is not required to show that her impairment could reasonably be expected to cause the severity of the symptom she has alleged; she need only show that it could reasonably have caused some degree of the symptom." *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009) (internal quotation marks omitted).

Second, "[i]f the claimant meets the first test and there is no evidence of malingering, the ALJ can only reject the claimant's testimony about the severity of the symptoms if [the ALJ] gives 'specific, clear and convincing reasons' for the rejection." *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (internal citations and quotations omitted). "General findings are insufficient; rather, the ALJ must identify what testimony is not credible and what evidence undermines



1 the claimant's complaints." *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th  
2 Cir. 1995)); *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) ("[T]he ALJ  
3 must make a credibility determination with findings sufficiently specific to permit  
4 the court to conclude that the ALJ did not arbitrarily discredit claimant's  
5 testimony."). "The clear and convincing [evidence] standard is the most  
6 demanding required in Social Security cases." *Garrison v. Colvin*, 759 F.3d 995,  
7 1015 (9th Cir. 2014) (quoting *Moore v. Comm'r of Soc. Sec. Admin.*, 278 F.3d  
8 920, 924 (9th Cir. 2002)).<sup>1</sup>

9  
10  
11 <sup>1</sup> Defendant argues that this court should apply a more deferential "substantial  
12 evidence" standard of review to the ALJ's credibility findings. ECF No. 21 at 3  
13 n.1. The Court declines to apply this lesser standard. The Ninth Circuit  
14 reaffirmed that "the ALJ can reject the claimant's testimony about the severity of  
15 her symptoms only by offering specific, clear and convincing reasons for doing  
16 so;" and further noted that "[t]he government's suggestion that we should apply a  
17 lesser standard than 'clear and convincing' lacks any support in precedent and  
18 must be rejected." *Garrison*, 759 F.3d at 1015 n.18; *see also Burrell v. Colvin*,  
19 775 F.3d 1133, 1137 (9th Cir. 2014).

20 ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ~

1 In making an adverse credibility determination, the ALJ may consider, *inter*  
2 *alia*, (1) the claimant's reputation for truthfulness; (2) inconsistencies in the  
3 claimant's testimony or between his testimony and his conduct; (3) the claimant's  
4 daily living activities; (4) the claimant's work record; and (5) testimony from  
5 physicians or third parties concerning the nature, severity, and effect of the  
6 claimant's condition. *Thomas*, 278 F.3d at 958-59.

7 This Court finds the ALJ provided specific, clear, and convincing reasons  
8 for finding that Plaintiff's statements concerning the intensity, persistence, and  
9 limiting effects of her symptoms "are not entirely credible." Tr. 24-26.

10 1. *Lack of Objective Medical Evidence*

11 The ALJ found Plaintiff's treatment record was inconsistent with Plaintiff's  
12 symptom claims and showed Plaintiff was not as limited as she alleged. Tr. 24.  
13 As the ALJ noted, while Plaintiff endorsed depressive symptoms and reported  
14 contemplating suicide, Plaintiff's medical records show her depression was  
15 moderate at worst, not debilitating and, possibly exaggerated to obtain narcotics.  
16 Tr. 24-26, 262-263, 320, 811.

17 Enid Griffin, Psy.D, and Alysa Ruddell, Ph.D., evaluated Plaintiff for the  
18 Department of Social and Health Services (DSHS) and found that Plaintiff

1 suffered from depression. Tr. 25 (citing Tr. 324, 317). But that depression was  
2 not so debilitating as to recommend SSI benefits. Tr. 320.

3 As an initial matter, the ALJ noted that when Plaintiff presented with  
4 suicidal ideation, it was tied to an attempt to obtain prescription medication. Tr.  
5 24-26. Before and after Dr. Griffin and Dr. Ruddell examined Plaintiff, Plaintiff  
6 went to medical providers tearful, sobbing, upset, and reported suicidal thoughts.  
7 Tr. 24-25, 262, 811. In the first instance, Plaintiff admitted she was upset because  
8 she was being weaned off narcotics and benzodiazepines, told staff she could  
9 hardly talk because she needed her medication, and she repeatedly visited the  
10 nurses' station to request additional medication. Tr. 262. After a visit from  
11 Plaintiff's ex-husband, Plaintiff's demeanor changed dramatically; she denied  
12 suicidal ideation and appeared "clean, nicely attired, freshly showered . . . . was  
13 pleasant, calm, cooperative, and not exhibiting any distress . . . ." Tr. 262-63.  
14 Noticing the change in her demeanor, hospital staff searched her room and found  
15 unauthorized narcotics. Staff identified Plaintiff's "issues as stemming directly  
16 from her substance abuse and dependence." Tr. 263. Because Plaintiff did not  
17 wish to acknowledge or treat her dependence, the hospital discharged her. Tr.  
18 263. In the second instance, Plaintiff threatened to kill herself if her mental health  
19 provider did not refill her benzodiazepine prescription. Tr. 811. She later

20 ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ~

1 admitted she was not suicidal but, rather made the statement to get someone “to  
2 take [her] seriously and give [her] benzos.” Tr. 26 (citing Tr. 811). The medical  
3 record, as the ALJ reasonably found, shows Plaintiff’s depression is not as  
4 debilitating as she alleges.

5 In addition, the ALJ set forth how Plaintiff’s treatment record was also  
6 inconsistent with the memory and concentration limitations she alleged. While  
7 Plaintiff testified that she “can’t concentrate very well at all,” and that she has a  
8 “horrible memory,” Tr. 48, providers noted “no impairment of memory or  
9 intellectual functioning” and that her memory and concentration were “intact.” Tr.  
10 290, 318, 525, 529, 642, 715, 720, 754. In November 2010, Plaintiff could recall  
11 three out of three objects immediately and after a several-minute delay. Tr. 290.  
12 Plaintiff could spell the word “world” forwards, but had some difficulty spelling it  
13 backwards. Tr. 290. On March 7, 2011, Plaintiff could recall three words on  
14 second presentation and, in five minutes, she recalled two words and recognized  
15 the third word. Tr. 318. At the end of the mental status exam (MSE), Plaintiff  
16 recalled all of the words. Tr. 318. Plaintiff also repeated four digits forward and  
17 two digits backward, and “was able to multitask.” Tr. 318. Dr. Ruddell concluded  
18 Plaintiff could remember and learn with repetition. Tr. 318. In January 2012, Dr.  
19 Griffin examined Plaintiff and found her oriented. Tr. 329. Plaintiff recalled three

20 ORDER DENYING PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT  
AND GRANTING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT ~

1 out of three objects immediately and one out of three objects after five minutes,  
2 recognizing the other two objects when presented with multiple-choices. Tr. 329.  
3 Plaintiff also correctly spelled “world” backwards and forwards. Tr. 329. There is  
4 substantial evidence supporting the ALJ’s conclusion that the medical record did  
5 not corroborate the debilitating memory and concentration limitations Plaintiff  
6 alleged. Tr. 525, 642, 650, 754, 715 (finding no impairment of memory or  
7 intellectual functioning and Plaintiff’s memory and intellect grossly intact).

8 Plaintiff’s treatment records are also inconsistent with the severity of  
9 limitations Plaintiff alleges to suffer from her anxiety. Plaintiff alleges she suffers  
10 from episodes of panic that cause her to feel light-headed, her heart to race, and to  
11 experience difficulty breathing and thinking. Tr. 24, 44-45. As described above,  
12 Plaintiff appeared anxious when she was detained at Yakima Valley Memorial  
13 Hospital in September 2010. Tr. 24, 262. But, her anxiety and depressive  
14 symptoms subsided when she secured the medications she sought. Tr. 263.

15 Plaintiff’s issues were deemed to “stem[] directly from her substance abuse and  
16 dependence.” Tr. 263. In March 2011, Plaintiff told Dr. Ruddell her anxiety was  
17 worsening and, as a result, she avoided grocery shopping. Tr. 318. But, Dr.

18 Ruddell noted, Plaintiff was unaccompanied that day and appeared comfortable  
19 with her and the rest of the staff. Tr. 318. Assuming Plaintiff suffered from the

20 ORDER DENYING PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT  
AND GRANTING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT ~

1 anxiety she reported, Dr. Ruddell did not find Plaintiff's anxiety so debilitating as  
2 to preclude her from working; instead, the doctor recommended against Plaintiff  
3 filing for SSI benefits. Tr. 319. In January of 2012, Dr. Griffin examined  
4 Plaintiff. Tr. 322-330. Dr. Griffin diagnosed Plaintiff with an anxiety disorder not  
5 otherwise specified (NOS). Tr. 324. But Dr. Griffin noted that he did not observe  
6 symptoms of anxiety. Tr. 323. Instead, the only reference to any anxiety in Dr.  
7 Griffin's notes came from Plaintiff's self-reports. Tr. 328. The inconsistencies  
8 between the medical record and Plaintiff's symptom claims led the ALJ to  
9 reasonably conclude Plaintiff's limitations were not as debilitating as she alleged.

10 According to Plaintiff, the ALJ cherry-picked inconsistencies, which do not  
11 represent her functional abilities. As evidence, Plaintiff directs the Court's  
12 attention to "mental status examinations [that] consistently reveal abnormal  
13 findings, including flat affect, dysphoric, anxious, or depressed mood; pressured  
14 speech; impaired memory; impaired attention and concentration; disorganized  
15 thought process; and poor insight and judgment." ECF No. 15 at 25 (citing Tr.  
16 376, 377, 379, 381, 392, 395, 408, 441-42, 465-66, 525, 650, 715).

17 First, the records consist almost entirely of checked boxes, not MSEs.  
18 Opinions on a check-box form or form reports which do not contain significant  
19 explanation of the basis for the conclusions may be accorded little or no weight.

20 ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ~

1 *See Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996); *Johnson v. Chater*, 87  
2 F.3d 1015, 1018 (9th Cir. 1996). Second, substantial portions of the cited records  
3 contradict Plaintiff's claims. For example, some indicate Plaintiff's thought  
4 process was logical and within normal limits, Tr. 376-377, 379, 392, 408, 442,  
5 465, 715, that her speech was within normal limits, Tr. 381, 408, 441, 465, and  
6 that her memory was intact, Tr. 525, 650, 715. Moreover, other records Plaintiff  
7 omitted are consistent with the ALJ's findings, showing Plaintiff's appearance,  
8 thought process, thought content, memory, judgment, and insight were within  
9 normal limits. Tr. 398, 399, 400, 404, 412, 425, 529, 642, 720, 754. Where the  
10 evidence conflicts, it is the ALJ's duty to resolve the ambiguity. *See Morgan v.*  
11 *Comm'r*, 169 F.3d 595, 599-600 (9th Cir. 1999). The ALJ is responsible for  
12 reviewing the evidence and resolving conflicts or ambiguities in testimony.  
13 *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). It is the role of the trier  
14 of fact, not this court, to resolve conflicts in evidence. *Richardson v. Perales*, 402  
15 U.S. 389, 400 (1971).

16 An ALJ may not discredit a claimant's pain testimony and deny benefits  
17 solely because the degree of pain alleged is not supported by objective medical  
18 evidence. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); *Bunnell v.*  
19 *Sullivan*, 947 F.2d 341, 346-47 (9th Cir. 1991); *Fair v. Bowen*, 885 F.2d 597, 601

(9th Cir. 1989). However, the medical evidence is a relevant factor in determining the severity of a claimant's pain and its disabling effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. §§ 404.1529(c)(2), 416.929(c)(2); *see also* S.S.R. 96-7p.<sup>2</sup> Minimal objective evidence is a factor which may be relied upon in discrediting a claimant's testimony, although it may not be the only factor. *See Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005). Moreover, contradiction with the medical record is a sufficient basis for rejecting the claimant's subjective testimony. *Carmickle v. Comm'r Soc. Sec. Admin.*, 533 F.3d 1155, 1161 (9th Cir. 2008); *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995).

Here, the ALJ reasonably found Plaintiff's symptom claims were inconsistent with the medical record and these inconsistencies diminished Plaintiff's credibility. *Molina*, 674 F.3d at 1111 (the court "must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record.").

---

<sup>2</sup> S.S.R. 96-7p was superseded by S.S.R. 16-3p effective March 16, 2016. The new ruling also provides that the consistency of a claimant's statements with objective medical evidence and other evidence is a factor in evaluating a claimant's symptoms. S.S.R. 16-3p at \*6. Nonetheless, S.S.R. 16-3p was not effective at the time of the ALJ's decision and therefore does not apply in this case.



1           2.     *Inconsistent Statements*

2           The ALJ discredited Plaintiff's symptom claims because she provided  
3 inconsistent statements to medical providers at the hearing regarding both her  
4 symptoms and her substance abuse. Tr. 24-26.

5           Here, the record supports the ALJ's determination that Plaintiff provided  
6 inconsistent statements to providers about her symptoms. As described above,  
7 Plaintiff reported suicidal ideation only later to admit she was not suicidal;  
8 instead, Plaintiff admitted she made the statement to get someone to "give [her]  
9 benzos." Tr. 811. In two other instances, she went to a hospital complaining of  
10 suicidal ideation. Tr. 262-263; 833-834. In the first instance, the hospital  
11 determined Plaintiff's statement was made for the purpose of obtaining  
12 prescription medication. Tr. 262-263. In the other, Plaintiff reported ingesting  
13 nine Xanax pills with two shots of vodka in an attempt to take her own life, Tr.  
14 833, but Plaintiff tested negative for any benzodiazepines like Xanax. Tr. 829. In  
15 both instances, Plaintiff's reports were inconsistent with her own statements and  
16 the medical evidence.

17           Plaintiff also made inconsistent statements about her migraines. Plaintiff  
18 visited emergency rooms many times over the years complaining of migraines.  
19 While Plaintiff complained of migraines, she sometimes sought medication

20 ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ~

1 unrelated to her symptoms, like muscle relaxers and also later admitted to abusing  
2 medication for her migraines. Tr. 515, 896. When Plaintiff stopped abusing her  
3 medication, Plaintiff confessed her migraines “nearly disappeared.” Tr. 709.

4 The record also supports the ALJ’s determination that Plaintiff made  
5 inconsistent statements about her substance abuse. For example, Plaintiff told a  
6 provider she never abused alcohol in her past, but the provider noted that she  
7 previously reported being a heavy alcoholic. Tr. 710. The ALJ reasonably  
8 concluded that these inconsistent reports about Plaintiff’s migraines and substance  
9 abuse lessened her credibility. Tr. 26-27.

10 Plaintiff contends the ALJ’s recitation of her drug overdoses is an  
11 impermissible attempt to impugn her credibility based on her addiction. ECF No.  
12 15 at 22 (citing Tr. 24-25; 20 C.F.R. § 416.935). In contrast, the ALJ discredited  
13 Plaintiff’s symptom claims because the evidence of record suggests Plaintiff gave  
14 inconsistent information to providers about her symptoms and substance abuse.  
15 Tr. 24-25. In making a credibility evaluation, the ALJ may rely on ordinary  
16 techniques of credibility evaluation. *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th  
17 Cir. 1996). One strong indication of the credibility of an individual’s statements is  
18 their consistency, both internally and with other information in the case record. In  
19 assessing credibility, it is appropriate for an ALJ to consider inconsistent

1 statements made by a claimant. *See Thomas*, 278 F.3d at 958-59 (ALJ may  
2 consider inconsistent statements); *see also Verduzco v. Apfel*, 188 F.3d 1087, 1090  
3 (9th Cir. 1999) (permitting ALJ to consider claimant's inconsistent statements  
4 about drug and alcohol abuse). Moreover, an ALJ may take into account evidence  
5 of drug-seeking behavior in assessing credibility. *See Edlund*, 253 F.3d at 1157-  
6 58 (evidence of drug-seeking behavior may undermine a claimant's credibility);  
7 *Gray v. Comm'r of Soc. Sec.*, 365 Fed. App'x. 60, 63 (9th Cir. 2010) (evidence of  
8 drug-seeking behavior is a valid reason for finding a claimant not credible); *Lewis*  
9 *v. Astrue*, 238 Fed. App'x. 300, 302 (9th Cir. 2007) (inconsistency with the  
10 medical evidence and drug-seeking behavior sufficient to discount credibility).  
11 The ALJ's reasoning constitutes clear and convincing reasons to discredit  
12 Plaintiff.

### 13 **B. Medical Opinion Evidence**

14 Plaintiff faults the ALJ for discounting the opinions of examining  
15 physicians Janis Lewis, Ph.D.; Alysa Ruddell, Ph.D.; and Enid Griffin, Psy.D.; and  
16 not fully incorporating the opinions of state agency psychological consultants  
17 Renee Eisenhauer, Ph.D., and Kent Reade, Ph.D. (consultants). ECF No. 15 at 5.

18 There are three types of physicians: "(1) those who treat the claimant  
19 (treating physicians); (2) those who examine but do not treat the claimant

(examining physicians); and (3) those who neither examine nor treat the claimant but who review the claimant's file (nonexamining or reviewing physicians).” *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (brackets omitted). “Generally, a treating physician's opinion carries more weight than an examining physician's, and an examining physician's opinion carries more weight than a reviewing physician's.” *Id.* at 1202. “In addition, the regulations give more weight to opinions that are explained than to those that are not, and to the opinions of specialists concerning matters relating to their specialty over that of nonspecialists.” *Id.* (citations omitted).

If a treating or examining physician's opinion is uncontradicted, an ALJ may reject it only by offering “clear and convincing reasons that are supported by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). “However, the ALJ need not accept the opinion of any physician, including a treating physician, if that opinion is brief, conclusory and inadequately supported by clinical findings.” *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009) (internal quotation marks and brackets omitted). “If a treating or examining doctor's opinion is contradicted by another doctor's opinion, an ALJ may only reject it by providing specific and legitimate reasons that are supported

1 by substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester*, 81 F.3d at 830-  
2 31).

3 The opinions of Dr. Lewis, Dr. Ruddell, and Dr. Griffin were contradicted,  
4 accordingly, the ALJ was required to offer specific and legitimate reasons for  
5 discounting those opinions.

6 1. *Dr. Janis Lewis*

7 In 2010, Dr. Lewis opined that Plaintiff had moderate and marked  
8 limitations in certain areas of social and cognitive functioning. Tr. 300.  
9 The ALJ accorded Dr. Lewis’ opinion little weight because Dr. Lewis’ opinion  
10 was not supported by or consistent with the evidence in the record, was  
11 inconsistent with Plaintiff’s daily activities, and was based on Plaintiff’s self  
12 reports, which the ALJ had discredited. Tr. 28.

13 For example, Dr. Lewis opined that Plaintiff suffered moderate limitations  
14 in her ability to perform routine tasks. Tr. 300. The ALJ noted that Dr. Lewis’  
15 opinion was not supported by Plaintiff’s medical record because Dr. Lewis did not  
16 review that record. Rather, Dr. Lewis based her opinion on Plaintiff’s report that  
17 she procrastinates. Tr. 300. While Dr. Lewis observed that Plaintiff’s appearance  
18 supports her reports, that observation was inconsistent with her notes that  
19 Plaintiff’s appearance was “average.” Tr. 303. In addition, the ALJ found

1 Plaintiff's other daily activities contradict those reports and Dr. Lewis' opinion.  
2 Tr. 28. Specifically, the ALJ noted that Plaintiff reported being able to attend to  
3 activities of daily living and grocery shopping on a regular basis with a friend. Tr.  
4 28 (citing Tr. 300). These activities, the ALJ concluded, show the Plaintiff is not  
5 as limited as Dr. Lewis opined. Tr. 28.

6 When weighing medical opinions, an ALJ may consider the supportability  
7 and consistency of the opinion with other evidence, including evidence of a  
8 claimant's daily activities. 20 C.F.R. §416.927(c)(3)-(4); *see also Morgan*, 169  
9 F.3d at 601-602 (explaining that an ALJ may reject an opinion if it is inconsistent  
10 with a claimant's daily activities).

11 In addition to finding Plaintiff's daily activities inconsistent with Dr. Lewis'  
12 opinion, the ALJ found Dr. Lewis relied heavily on symptoms Plaintiff reported.  
13 Tr. 28. Those reports, as explained above, were discredited. Accordingly, the  
14 ALJ could properly discount any medical opinion, like Dr. Lewis', which were  
15 based largely on Plaintiff's discredited symptom claims. *Tonapetyan v. Halter*,  
16 242 F.3d 1144, 1149 (9th Cir. 2001) (permitting an ALJ to discount the opinion of  
17 a medical source whose conclusions are based largely on discredited, subjective  
18 complaints of a claimant).

1 Plaintiff contests the ALJ's findings, contending Dr. Lewis' observations  
2 and MSE support her opinion. ECF No. 15 at 7-11. Plaintiff contends the ALJ  
3 should have credited Dr. Lewis' finding that she suffers (1) moderate limitations  
4 in her ability to perform routine tasks, (2) significant limitations in her ability to  
5 learn new tasks, and (3) some limitation in her ability respond appropriately to and  
6 tolerate the pressures and expectations of a normal work setting. ECF No. 15 at 8-  
7 9. However, the doctor's heavy reliance on Plaintiff's discredited reports qualifies  
8 as a specific and legitimate reason for discrediting Dr. Lewis' opinion.  
9 *Tonapetyan*, 242 F.3d at 1149. Plaintiff's argument would require this Court to  
10 reweigh the evidence, which it will not do. *Burch*, 400 F.3d at 679 ("Where  
11 evidence is susceptible to more than one rational interpretation, it is the ALJ's  
12 conclusion that must be upheld.").

13 Next, Plaintiff contends Dr. Lewis' MSE supports her finding that Plaintiff  
14 suffers moderate limitation in her ability to learn new tasks. ECF No. 15 at 9.  
15 Specifically, Dr. Lewis observed that she had to repeat questions to the Plaintiff.  
16 Tr. 300. Assuming the ALJ rejected this opinion, any error was harmless because  
17 the ALJ limited Plaintiff to simple, routine tasks. Tr. 23. *See Stout v. Comm'r*  
18 *Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006) (error harmless where it is  
19 non-prejudicial to claimant or irrelevant to ALJ's ultimate disability conclusion).

1 Last, the Plaintiff contends the ALJ should have credited Dr. Lewis' opinion  
2 that Plaintiff suffered some limitations in her ability to maintain appropriate  
3 behavior in the workplace. Dr. Lewis observed that Plaintiff was "irritable but  
4 cooperative; sighs a lot." Tr. 300. But Dr. Lewis did not indicate whether  
5 Plaintiff suffered any severe interference in her ability to tolerate the pressures and  
6 expectation of a normal work setting. Tr. 300. Thus, the ALJ did not err in  
7 omitting this limitation from Plaintiff's RFC.

8 2. *Dr. Alysa Ruddell*

9 In May 2011, Dr. Ruddell opined that Plaintiff had moderate to marked  
10 limitations in her "cognitive and social factors." Tr. 28. The ALJ discounted Dr.  
11 Ruddell's opinion because it was not consistent with or supported by the evidence  
12 of the record and Dr. Ruddell relied on Plaintiff's self-reports, which the ALJ  
13 discredited. Tr. 28.

14 For example, Dr. Ruddell opined that Plaintiff had a limited ability to  
15 perform routine tasks without undue supervision. Tr. 318. The ALJ noted that Dr.  
16 Ruddell's own examination notes were inconsistent with the opinion in that they  
17 showed that Plaintiff's attention to detail was adequate and that Plaintiff



1 completed a three-step command correctly. Tr. 318.<sup>3</sup> Dr. Ruddell also opined that  
2 Plaintiff was limited in her ability to communicate and perform effectively with  
3 limited public contact. Tr. 318. The ALJ noted that upon examination, Dr.  
4 Ruddell found that Plaintiff was comfortable with the examiner and the DSHS  
5 staff while in the waiting area. Tr. 29 (citing Tr. 318). Accordingly, the ALJ  
6 found Dr. Ruddell's examination notes inconsistent with her opinion. Tr. 29.  
7 Moreover, the ALJ noted that Dr. Ruddell did not have the opportunity to review  
8 Plaintiff's records, but instead, Dr. Ruddell relied heavily on the Plaintiff's  
9 subjective complaints, which the ALJ had discredited. Tr. 29.

10  
11 \_\_\_\_\_  
12 <sup>3</sup> Plaintiff contends that, contrary to the ALJ's finding, Dr. Ruddell never found  
13 Plaintiff could perform a three-step command correctly. ECF No. 15 at 12 (citing  
14 Tr. 315-321). While Dr. Ruddell did not use the phrase "three-step task," she  
15 described Plaintiff performing a three-step task: "[s]he filled out the examiners'  
16 Application for Evaluation forms. The form instructions ask that the form be  
17 folded and placed on the counter, which she did." Tr. 318. As instructed, Plaintiff  
18 (1) completed the form, (2) folded it, and (3) placed it on the counter as instructed.  
19 Thus, the ALJ reasonably concluded Plaintiff completed a three-step instruction.

1 An opinion inconsistent with the evidence of record and treatment notes  
2 constitutes a specific and legitimate reason for discounting a physician's opinion.  
3 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008).

4 Plaintiff challenges the ALJ's reasoning for rejecting Dr. Ruddell's other  
5 assessment: that Plaintiff suffers marked limitations in her ability to maintain  
6 appropriate behavior in a work place. The ALJ's reasoning, Plaintiff contends,  
7 ignores Dr. Ruddell's observations that Plaintiff has problematic eye contact,  
8 problems with coworker and supervisors, and does not participate in social  
9 activities. Tr. 318. But, with the exception of Plaintiff's eye contact, Dr. Ruddell  
10 did not observe Plaintiff's problems. Tr. 318. Rather, Dr. Ruddell relied on  
11 Plaintiff's reports which, as described above, the ALJ properly discredited. Tr.  
12 318; *Tonapetyan*, 242 F.3d at 1149 (permitting an ALJ to discount the opinion of a  
13 medical source whose conclusions are based largely on discredited, subjective  
14 complaints of a claimant).<sup>4</sup> Plaintiff's problematic eye contact, considered in

15 \_\_\_\_\_  
16 <sup>4</sup> Plaintiff contends Dr. Ruddell's opinion is not more heavily based on Plaintiff's  
17 reports than clinical findings and observations. But Plaintiff's problematic eye-  
18 contact is the only observation Dr. Ruddell made supporting her assessment. That  
19 observation alone could not sustain the marked limitation Dr. Ruddell assessed.

1 context with her comfort with Dr. Ruddell and office staff, does not make the  
2 ALJ's interpretation of the evidence unreasonable. This Court must uphold the  
3 ALJ's rational interpretation of the evidence. *Burch*, 400 F.3d at 679.

4 Last, Plaintiff contends Dr. Ruddell's opinion is supported by other  
5 treatment records. While Plaintiff cites to a variety of treatment records, Plaintiff  
6 fails to explain how those records support Dr. Ruddell's opinion. This Court  
7 reviews "only issues which are argued specifically and distinctly in a party's  
8 opening brief." *Greenwood v. Fed. Aviation Admin.*, 28 F.3d 971, 977 (9th Cir.  
9 1994).

10 3. *Dr. Enid Griffin*

11 Enid Griffin, Psy.D., opined that Plaintiff exhibited mild to marked  
12 limitations in her cognitive and social abilities. Tr. 323-324. Dr. Griffin believed  
13 these impairments would last twelve months or longer, but that Plaintiff could  
14 cooperate with treatment and receive vocational training or services to minimize  
15 or eliminate barriers to employment. Tr. 325.

16  
17 Dr. Ruddell must have relied heavily on Plaintiff's self-reports to conclude she  
18 was so limited in her ability to communicate and perform effectively in a work  
19 setting.

1 The ALJ afforded Dr. Griffin's opinions little weight because they were not  
2 supported by or consistent with the evidence of record, including the opinions of  
3 consultants, Renee Eisenhauer, Ph.D., and Kent Reade, Ph.D. Tr. 29. In support  
4 of his finding, the ALJ compared Dr. Griffin's observations with Plaintiff's self-  
5 reports. Tr. 29. While Plaintiff reported to Dr. Griffin that she does not shower on  
6 a daily basis, Tr. 328, Dr. Griffin noted that Plaintiff's hygiene and grooming were  
7 average and her dress was appropriate. Tr. 29 (citing Tr. 328-329). And, like the  
8 other psychologists who examined Plaintiff, Dr. Griffin did not have an  
9 opportunity to review Plaintiff's records, instead the ALJ found Dr. Griffin  
10 heavily relied on claimant's symptom claims, which the ALJ had discredited. Tr.  
11 29.

12 Plaintiff notes that an ALJ may not discount the opinion of an examining  
13 physician simply because it is inconsistent with the opinion of reviewing  
14 physicians. ECF No. 15 at 16 (citing *Morgan*, 169 F.3d at 602). While true, the  
15 ALJ offered other reasons for discounting Dr. Griffin's opinion. For example, the  
16 ALJ found the social limitations Dr. Griffin assessed inconsistent with his  
17 observation that Plaintiff was appropriately dressed and groomed. Tr. 29 (citing  
18  
19

Tr. 328-329).<sup>5</sup> The ALJ properly discounted Plaintiff's reports, and Dr. Griffin's observations contradict his opinion. These constitute specific and legitimate reasons for discounting the opinion of Dr. Griffin. *Tonapetyan*, 242 F.3d at 1149 (permitting ALJ to reject opinion heavily based on Plaintiff's discredited reports); *Bayliss*, 427 F.3d at 1216 (permitting ALJ to reject physician's assessment when contradicted by own observations).

Plaintiff also contests the ALJ's rejection of the cognitive limitations Dr. Griffin assessed, contending that the limitations were consistent with her medical record. ECF No. 15 at 16-17. Plaintiff cites to a variety of medical records referring to her problems with concentration, insight, and judgment. However, substantial records also exist indicating Plaintiff's memory and intellect were intact. *See, e.g.*, Tr. 525, 529, 642, 650, 715, 720, 754. Plaintiff asks this Court to reweigh the evidence. But, "[w]here evidence is susceptible to more than one

---

<sup>5</sup> Plaintiff challenges this finding too, citing other treatment records that document her difficulties with personal care. There are just as many other records that indicate Plaintiff's hygiene and appearance were within normal limits. Tr. 353, 365, 376, 377, 381, 384, 385, 387, 392, 395, 396, 398, 399, 400, 404, 408, 412, 425, 529.

1 rational interpretation, it is the ALJ's conclusion that must be upheld." *Burch*, 400  
2 F.3d at 679.

3 4. *State Agency Psychological Consultants*

4 Plaintiff faults the ALJ for crediting the opinions of the state-agency  
5 psychological consultants' opinions, but failing to incorporate all of their  
6 limitations. ECF No. 15 at 18-19. The consultants opined that Plaintiff's  
7 "depression and anxiety with accompanying poor stress tolerance would interfere  
8 with claimant's ability to maintain regular attendance and to persist through a  
9 normal workweek." Tr. 96, 108. The ALJ accorded this and the other opinions of  
10 the consultants "significant weight." Tr. 29-30. But, had the ALJ credited this  
11 portion of the consultants' opinions, Plaintiff contends, the ALJ should have found  
12 her disabled. ECF No. 15 at 19.

13 The Commissioner responds that while Plaintiff's symptoms may interfere  
14 with her ability to maintain regular attendance, "interfere" does not mean she  
15 cannot perform that activity at all. ECF No. 21 at 8. Despite the interference, the  
16 Commissioner notes that the consultants concluded Plaintiff's "impairments are  
17 not so severe that they would prevent claimant from being able to sustain more  
18 than one or two step instructions in a reasonably consistent manner." Tr. 96, 108.  
19 This language suggests the consultants limited their opinion of Plaintiff's ability to

1 persist through a normal workweek, finding she could persist if limited to simple,  
2 routine tasks with instructions. Tr. 96, 108. This is consistent with the ALJ's  
3 RFC determination. Tr. 23.

4 This reading of the consultants' opinion is bolstered by the context in which  
5 they gave their opinions. The form the consultants completed notified them that  
6 their response to the questions would "help determine the individual's ability to  
7 perform sustained work activities." Tr. 95, 107. Therefore, when the consultants  
8 opined that Plaintiff could sustain more than one or two-step instructions in a  
9 reasonably consistent manner, the ALJ reasonably assumed they meant Plaintiff  
10 could do it for a workday and a workweek.

11 The ALJ provided specific and legitimate reasons for affording little weight  
12 to these medical opinions.

### 13 CONCLUSION

14 The ALJ's decision is supported by substantial evidence and free of legal  
15 error.

### 16 IT IS ORDERED:

17 1. Plaintiff's Motion for Summary Judgment (ECF No. 15) is **DENIED**.

18 2. Defendant's Motion for Summary Judgment (ECF No. 21) is

19 **GRANTED**.

20 ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ~

1 The District Court Executive is directed to file this Order, enter  
2 **JUDGMENT FOR THE DEFENDANT**, provide copies to counsel, and **CLOSE**  
3 the file.

4 DATED this Monday, June 27, 2016.

5 s/ Mary K. Dimke  
6 MARY K. DIMKE  
7 UNITED STATES MAGISTRATE JUDGE  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19

20 ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ~